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June 22, 2021

In connection with the above-named case, the People voluntarily provide the following information regarding:

MOS NAME: **WILLIAM DUGAN**

MOS TAX: **944524**

in satisfaction (to the extent applicable) of their constitutional, statutory, and ethical obligations. Further, the People reserve the right to move in limine to preclude reference to this information, or otherwise to object to its use and/or introduction into evidence.

Disclosure:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION, DATED 5/14/2018, AGAINST MOS DUGAN:

ALLEGATION:

1. FAIL TO PREPARE REPORT - TRI REPORT

CASE STATUS: CLOSED ON 06/08/2018

PENALTY: A CD ISSUED.

Disclosure #2:

P.O. William Dugan, shield 3858, provided testimony in a combined Mapp/Huntley/Dunaway hearing for Indictment 6389/2017, which was held in Kings County Supreme Court on January 30, February 11, and February 20, 2019, and presided over by Judge Laura Johnson. In a written decision dated April 11, 2019, J. Johnson found that she was unable to credit P.O. Dugan's testimony regarding his observations and recovery of a ziplock bag of marihuana alleged to be on the defendant's person. The case was subsequently dismissed and sealed.

See attached below, a copy of J. Johnson's decision, redacted pursuant to a court order.

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Kings County

SUPREME COURT OF THE STATE OF NEW YORK
CRIMINAL TERM, COUNTY OF KINGS: PART 11

-----x
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION AND ORDER
Indictment No. 6389-2017

[REDACTED] Defendant.

-----x April 11, 2019

LAURA R. JOHNSON, J.

Defendant is charged with various crimes involving the possession of a loaded firearm and possession of marijuana. Police officers responding to a 911 report of a man with a machine gun at a public housing complex in the Coney Island neighborhood noticed that defendant matched the description given in the anonymous call. They allegedly detained and arrested him after spotting marijuana in a ziplock bag protruding from his back pocket. A gun was found in an open garbage bag near where defendant had been arrested, at around the same time. Defendant was charged with possessing it after the officers reviewed surveillance tape that appeared to show him dropping the gun into the bag. Subsequently, defendant was questioned by a detective whose assignment was to "enhance" gun cases and he purportedly made a statement admitting possession of the gun.

On January 20 and February 30, 2019, I held a combined Dunaway/Mapp/Huntley hearing on defendant's motions to suppress the marijuana and the statement he made to the detective after the gun had been found. The arresting officer, William Dugan, and his supervisor Sergeant Jonathan Sudsky testified for the People, as did Detective Michael Taylor, the detective who took defendant's statement. At the conclusion of the hearing, both sides asked to make their arguments in writing and I reserved decision.

SUMMARY OF TESTIMONY AT THE HEARING

The Initial Stop and Arrest

Both Officer Dugan and Sgt. Sudsky testified about the circumstances of defendant's arrest. In many ways, their accounts of defendant's arrest were consistent, and to the extent they are consistent, I credit them. The major differences between them, which present significant issues of credibility in my view, are discussed below.

Dugan and Sudsky were both assigned to Police Service Area One (PSA-1), which covers New York City Housing Authority developments in south Brooklyn. Together with Detective Angelo Pizzaro, they were on plainclothes anti-crime patrol in an unmarked police car on August 11, 2017 when they received a radio run at about 1:10 p.m. directing them to [REDACTED] Street. ^{Same Name as Defendant} The radio run indicated that there was a man named [REDACTED] with a machine gun at that location, dressed in a white t-shirt, black pants and a black and white hat.

On pulling into a parking lot at the [REDACTED] Street location, a New York City Housing development, the officers saw a group of between 12 and 15 men "scattering" in different directions, but their attention was immediately drawn to defendant, whose outfit closely resembled the description they had heard over the radio. Defendant was crossing in front of the unmarked car as it pulled up to the curb. Both Dugan and Sudsky got out and walked toward defendant, who was heading away from the officers. As they approached defendant, with Dugan in the lead and Sudsky to his side, the officers saw a large bluish green plastic bag zip-lock protruding from defendant's back left pocket. Dugan's description of the positioning of the bag was that about a quarter of it was above the top of defendant's pocket. Sgt. Sudsky said that a one to two-inch portion of the bag was visible.

Officer Dugan testified that although the radio run had described an individual in "pants," and defendant was wearing shorts, the shorts were so long and in addition, worn so low that they appeared similar to long pants. Two arrest photos taken of defendant at the precinct were introduced in evidence. Both show that defendant's long shorts sitting far below his waist; the photo taken in profile shows the waistband of the shorts positioned almost where defendant's buttocks end and his thighs begin. Dugan and Sudsky testified that these photographs accurately depicted where defendant's pants – and the rear pockets of his pants – fell or were positioned relative to his waist when they had observed him earlier at the housing development. Dugan, in fact, specifically volunteered that defendant's pants were likely a bit higher in the precinct photos than they had been at the scene.

The two witnesses' narratives began to diverge more significantly at this point. Dugan testified that on approaching defendant from behind, he smelt a strong odor of "raw" (meaning non-burning) marijuana in the air when Dugan was 5 to 7 feet from him (though he could not be certain of its origin) and that at a distance of 3 to 5 feet from defendant, he was able to discern not only that there was something in the bag but he could also see that the content was marijuana.

Sudsky, on the other hand, testified that he did not smell marijuana at all. Moreover, on direct examination he claimed, like Dugan, that the plastic bag "contained what appeared to be marijuana," but on cross examination conceded that even from as close as two feet away he actually could not make out the contents of the small part of the bag that protruded from defendant's pocket, although he continued to claim that he could see that there was "something" inside of it. Indeed, Sudsky ultimately testified that he did not know that the bag contained marijuana until Dugan told him so, *after* defendant had already been handcuffed.

In general, both officers agreed that Dugan in some fashion physically guided defendant over to a fence, handcuffed him and then took the plastic bag out of his pocket, and that these events occurred at roughly the same time or perhaps a minute or two after Pizzaro, the third officer, shouted that he had retrieved a gun from a plastic garbage bag and waved it in the air. Pizzaro later told Dugan that he had seen defendant by the bag. However, Officer Dugan testified that when he handcuffed defendant by the fence, the arrest was for "just possession of marijuana." Defendant was transported to PSA-1 headquarters while Sudsky and Dugan remained at the housing development in order to try to locate footage from CCTV surveillance cameras that would link defendant to the gun in the garbage bag.

The Surveillance Footage and Second Arrest

Dugan testified that he and Sgt. Sudsky went to the management office to review surveillance footage. The manager was not on the premises when they first got there. According to Dugan, Dugan began to fill out the first few lines of his complaint report while he was waiting, using blank forms that he keeps in his car for such occasions.¹ Eventually the manager returned, and the relevant video footage was located after the officers reviewed video beginning from about 15 to 20 minutes before the call directing them to the [REDACTED] Street location came over their radio. Video introduced into evidence at the hearing was, according to Officer Dugan, from "a few minutes before [Dugan and the others] arrived," and it shows an individual who appears to be defendant walking alongside a fence and then apparently removing a gun from beneath his long t-

¹Dugan testified that he did not complete the narrative part until much later, when he had returned to PSA-1 headquarters. According to Dugan, the fact that his handwritten "scratch" report bears a time notation of 2:30 p.m. but indicates that defendant had been arrested for gun possession and that the marijuana was field tested with positive results (neither of which had happened yet at 2:30 p.m.) was because Dugan started it while he was waiting to have access to the CCTV footage, but finished it much later. Defendant appears to suggest that this testimony itself shows that the marijuana claim was false. While the practice of filling in a few lines of a complaint report on the go is not one I've encountered before, and its utility is not obvious to me, I am not prepared to so conclude from that alone.

shirt and holding it up. Two still images taken from that video were also introduced at the hearing, and Dugan testified that they contained accurate images of what defendant had been wearing.

Dugan and Sudsky returned to PSA-1 headquarters with the video footage. Dugan then did various administrative tasks, which included field testing the marijuana, photographing the ziplock bag with the marijuana and the gun,² taking arrest photos of defendant, and processing defendant's arrest, which was now for both marijuana and gun possession.

The Interrogation at the 60th Precinct

Approximately 3½ to 4 hours after the initial incident, Officer Dugan took defendant to the 60th Precinct so that he could be interviewed by a member of that Detective Squad, which "enhances" all of PSA-1's firearms arrests. Officer Dugan was present while defendant was interviewed by Detective Michael Taylor. The only interrogation room is ordinarily equipped for video recording of interviews, but after hearing from PSA-1, Taylor learned that the video system was not working that day. Later, he notified the "techs" at One Police Plaza, who gave him a ticket number and said they would come and fix it, but in Detective Taylor's experience, such repairs take weeks. Consequently, Taylor simply took notes during the interview. Before the interview began, Dugan had told Taylor only that it was a gun arrest and that there was surveillance footage of unspecified nature.

In the interview room, defendant was seated, unhandcuffed, at a table with Detective Taylor across from him, and Officer Dugan at the side of the table to defendant's left and the detective's right. Taylor began by reading defendant his Miranda rights from a form and asked if defendant understood each one. After each question, Detective Taylor wrote "yes," next to which

² These photographs were in evidence.

defendant wrote his initials. Dugan later also signed the Miranda Warning sheet, which was introduced into evidence at the hearing.

The interview lasted approximately 10-15 minutes, during which defendant smoked three cigarettes given to him by Detective Taylor. Taylor told defendant he was there for an alleged gun arrest, and asked the defendant to explain. Defendant said that his mother called him to come to [REDACTED] Street, [REDACTED]. There, his brother and his mother told him that there was a firearm inside of a bag. Defendant said that the gun had belonged to his late father, a military veteran. Defendant said he decided to get rid of it. Defendant said he did not want to turn the firearm over to the police, but had no answer when Taylor asked why he did not give it to the clergy.

According to Detective Taylor, defendant then "changed the conversation" and said that a foreman called [REDACTED] was having a dispute with some guys who work for him, and defendant was at his mother's house to get a good construction job. When asked what had happened to the firearm, defendant said he went out of the building to the rear and placed the bag with the firearm into the garbage and walked toward the basketball court. Defendant stated that he had some "bud" on him, which Taylor understood to mean marijuana, and a cell phone.

After defendant had said these things, the detective asked defendant if he would like to write his statement in his own words. When defendant declined, Taylor wrote what he recalled of what defendant had said, asking defendant some more questions to get him to repeat it, and gave defendant the opportunity to look at what Taylor had written. At that point, defendant asked whether they were being videotaped. Officer Dugan told him they were not – something that Taylor had not planned to tell defendant. Defendant then said he didn't want to get nobody in trouble, and started to scribble on the paper, crossing out what Detective Taylor had written about putting the

gun in the “garbage.” Taylor then suggested that defendant write in his own words what had happened, and defendant wrote, “This is bullshit. I was only there for a good job. Mr. T█████ told me to meet him there. It was no fighting, just shouting.” After that, Taylor concluded the interview. Defendant asked if he could “holler at” Detective Taylor, by which the detective understood that defendant wanted to speak to him separately – quite likely to offer other information, perhaps about other crimes. The detective declined to arrange that.

CREDIBILITY/FACTUAL FINDINGS AND LEGAL CONCLUSIONS

The Stop and Arrest

If Officer Dugan’s testimony about his encounter with defendant is believed, his actions were lawful. Approaching defendant was justified either as an attempt to get further information or even as an exercise of the common law right to inquire about the reported gun, given how closely defendant’s attire matched the description of a man with a machine gun given in the radio call to which Dugan and his fellow officers were responding. And Dugan’s view of a quantity of marijuana in the top of the bag protruding from defendant’s back pocket then gave him probable cause not just to stop and detain defendant but to arrest him.

However, although I am persuaded that Officer Dugan and Sgt. Sudsky’s testimony about their initial view of defendant as they arrived at ██████████ Street is accurate and that they lawfully approached him, I am unable to credit Dugan’s testimony about how he saw and recovered the ziplock bag of marijuana.

First, Dugan’s testimony about how defendant was carrying the marijuana – while not impossible – seems unlikely. Given his testimony that the video clip introduced and played during the hearing shows events that occurred very shortly before the officers encountered defendant, and

given that on it defendant can be seen still in possession of a gun, then logically defendant must have hidden the gun in the trash bag almost immediately before the officers pulled up and saw him. It seems somewhat improbable that if defendant were divesting himself of incriminating evidence, he would nonetheless have continued to walk around with a large baggie of marijuana carelessly stuffed into a rear pocket hanging below the level of his shirt bottom.

Moreover, Officer Dugan expressly testified that the photos he took of defendant at the precinct accurately depicted the positioning of defendant's pants when Dugan encountered him at the scene, specifically stating that if anything, defendant's pants were a bit higher when he was photographed at the precinct than when defendant first walked in front of Dugan with the marijuana in view. This testimony was clearly intended to explain why, despite the fact the defendant was also wearing a long white t-shirt that was untucked at the scene, his back pocket and the top of the bag were visible to Dugan. However, the video clip from right before the officers' arrival shows the just opposite — defendant's pants appear significantly higher at the *scene* than in his post-arrest photos. Nor is anything resembling a plastic bag, nor any object visible in defendant's rear pockets.³

In addition — even accepting that defendant's pants may have dropped a good few inches in the brief time between when the short video clip ended and when the officers arrived — the ziplock bag itself, as seen in the photograph Dugan took at the precinct, appears to be rather less than half full. It is extremely difficult, then, to imagine how any of the marijuana, rather than

³ This could, of course, be because the image is too small to see a plastic bag. However, although defendant is walking in the video with his right side closest to the camera, his entire back can be seen at several points, and it appears that a bag in or protruding from his left pocket might well be visible, if the image were enlarged or zoomed in on. Assuming there was such a bag, it is a bit surprising that no effort was made to do that.

remaining at the bottom of the bag as the photograph shows, somehow made its way to the top and became lodged there, so as to be visible in the way Dugan described.⁴

Finally, although Sgt. Sudsky also claimed to have seen a part of the bag, he stopped well short of testifying that he was able to see marijuana in it. Granted that Dugan was apparently the closer of the two to defendant while the events unfolded, Sudsky nonetheless admitted that he did not see marijuana even when he came to be only two feet from defendant – at least a full foot closer than the 3 to 5 foot distance at which Dugan claimed to be able to discern the marijuana. Indeed, unlike Dugan, Sudsky did not claim that he could smell the supposed strong odor of marijuana.

Taken together – and viewed in light of Dugan’s evident awareness that, at the time he first handcuffed defendant up until the discovery of the video evidence, despite his strong suspicion that defendant was the subject of the radio run, he did not have probable cause to detain defendant in connection with the gun – these gaps and inconsistencies lead me to conclude that I cannot rely on Dugan’s narrative, and are enough to prevent me from finding that the People have met their burden of coming forward with credible evidence that established the lawfulness of the police conduct in detaining, searching and arresting defendant for the marijuana. The motion to suppress the marijuana is granted.

The Interrogation and Statement

Despite the fact that I am unable to find that the credible testimony at the hearing established the lawfulness of defendant’s initial detention and arrest, the statement he made at the

⁴ If the bag had been rolled up and positioned horizontally in defendant’s pocket, so that the “top quarter” Dugan testified to seeing was actually part of the side rather than the literal “top” of the bag, I would have expected Dugan to explain as much, especially during defense counsel’s fairly thorough cross examination about where and how Dugan saw marijuana in the bag. Certainly Sgt. Sudsky’s description of seeing 1 to 2 inches of bag did not suggest a rolled-up ziplock.

60th Precinct need not be suppressed if it is sufficiently attenuated from the unlawful arrest (*People v Bradford*, 15 NY3d 329, 333 [2010]). In order to determine whether such attenuation exists, a court must “consider the temporal proximity of the arrest and the [evidence at issue], the presence of intervening circumstances and, particularly, the purpose and flagrancy of the official misconduct” (*id.*, 15 NY3d at 333 [internal quotation marks and citation omitted]; *see also Brown v Illinois*, 422 US 590, 603-604 [1975]).

In this case, defendant was brought to a different police facility, 3½ to 4 hours after the illegal arrest, to speak with a detective who was uninvolved with the initial arrest. According to the testimony of both Officer Dugan and Detective Taylor, this detective was then provided with almost no information about that case, other than that it was an arrest for “possession of an alleged firearm.” Aside from knowing that there might be some video of something, Taylor asked no questions of the arresting officer, who supposedly volunteered almost no information. The interrogation was, I find, proceeded by a full set of Miranda warnings, and I find nothing inherently coercive or improper about the interview as described by Detective Taylor. Moreover, before the interrogation, the police had obtained video surveillance footage that showed defendant in possession of the gun, so that at that point (albeit well after they had taken defendant into custody) they actually had probable cause to arrest defendant for possessing the gun. In short, there were a number of significant intervening circumstances between the initial arrest and the statement.

Nevertheless, in this case where the Court has concluded that the credible evidence does not establish probable cause for the initial police action, but does suggest a strong motive deliberately to detain defendant without probable cause precisely so that he would not flee while a search for additional evidence of gun possession could be carried out, the manner in which the interrogation was conducted does not sanitize that conduct. Indeed, Detective Taylors rather

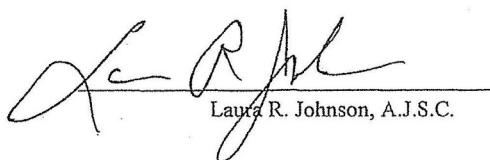
markedly incurious approach to his stated mission of "enhancing" the arrest suggests a conscious effort to exploit the original illegal arrest. The police seemingly had one and only one objective in conducting this interview: to obtain an admission from this individual that he possessed the firearm that they had suspected him of possessing from the moment they first saw him in the parking lot. Indeed, so singular was that objective that when defendant offered to "holler at" the detective about unrelated matters, the detective declined to entertain that request, even if defendant might have had information about "either narcotics, either homicides [or] shootings, unrelated to why he was there at the precinct." Accordingly, I find, in this case, that "the police exploited the illegal detention in such a way as to establish that it was the detention which produced the challenged statements" (*People v Rogers*, 52 NY2d 527, 535 [1981]) and that the interrogation was not attenuated from the initial unlawful arrest. Defendant's statement was the fruit of that illegal police action and must be suppressed.

CONCLUSION

Accordingly, defendant's motion to suppress the marijuana and his statement to the police is GRANTED.

The foregoing constitutes the Decision and Order of the Court.

DATED: April 11, 2019
Brooklyn, New York



Laura R. Johnson, A.J.S.C.